IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 352 of 2000.

Judgement reserved on: 26.11.2007

Date of decision: 30.11.2007.

State of H.P. **…….Appellant**

Vs.

Nanak Chand **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. M.L. Chauhan, Addl. Advocate General.

For the Respondent : Mr. Rajesh Mandhotra, Advocate.

Kuldip Singh, Judge.

The State is in appeal against the judgment dated 20.1.2000 passed by learned Addl. Chief Judicial Magistrate, Dehra, District Kangra in Criminal Case No.108-II/95, acquitting respondent under Sections 279, 304-A IPC.

2. The prosecution case in brief is that respondent was driving Van No.HP-02-2786 on 23.4.1995 from Ranital to Jawalamukhi, at place Balu Gloa, he hit Jhagri Ram at about 6 p.m., Jhagri Ram sustained serious injuries. He was removed to CHC Jawalamukhi and then to Zonal Hospital, Dharamshala where he succumbed to his injuries. On the statement of his son Prakash Chand, FIR No.29/95 was registered at Police Station, Haripur under

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Whether the reporters of the local papers may be allowed to see the Judgment?Yes

Sections 279, 304-A IPC. On completion of investigation challan was put up against respondent and he was charged under Sections 279, 304-A IPC, to which he pleaded not guilty and claimed trial. The prosecution has examined 5 witnesses. Statement of respondent under Section 313 Cr.P.C. was recorded, he pleaded his innocence. No witness in defence was examined by him. The learned Addl. Chief Judicial Magistrate acquitted the respondent, hence, State is in appeal.

3. I have heard Mr. M.L. Chauhan, learned Addl. Advocate General for the State and Mr. Rajesh Mandhotra, learned counsel for the respondent and gone through the record. It has been submitted on behalf of the State that prosecution has proved the case against the respondent beyond reasonable doubt. The respondent was driving the Van rashly and negligently and he hit Jhagri Ram, who sustained injuries and ultimately died. The learned counsel for the respondent has supported the impugned judgment.

4. PW-1 Prakash Chand has stated that his father Jhagri Ram died in an accident. He is not an eye witness to the accident. PW-2 Bhumi Singh has stated his mill is on Paeesa road. Jhagri Ram was crossing road on 23.4.1995, taxi No.2786 hit Jhagri Ram and he fell down. The driver took him to Jawalamukhi hospital. He was unconscious. The taxi was in high speed. Jhagri Ram died later on. In cross-examination he has stated that Jhagri Ram had weak eye sight. A bus came from Jawalamukhi side. He has denied that Jhagri Ram in confusion jumped. He was going to the shop and was

standing on the road. He denied that accident did not not take place in his presence.

5. PW-3 Harnam Singh has said that on 23.4.1995 at about 6 p.m. he saw an old man lying on the road. He did not support the prosecution and was cross-examined by the prosecution but nothing favourable to prosecution was extracted in his cross-examination. In cross examination on behalf of respondent he has stated that he has not seen the accident.

6. PW-5 Balwan Singh is the investigating officer. He has prepared the site plan Ex.PW 5/A. PW-2 Bhumi Singh has simply stated that the taxi was in high speed. He has not stated that the accident took place due to rash and negligent driving of the respondent. The high speed is a relative term, moreover high speed in itself in a given situation may not be an act of rash or negligent driving. PW-2 has admitted in his cross-examination that Jhagri Ram had weak eye sight. Possibility cannot be ruled out that because of weak eye sight he involved himself in the accident. Only PW-2 has stated about the accident but his statement is not enough to bring home the guilt of the respondent. There is no other evidence on record to prove the rash or negligent act on the part of the respondent for causing the accident. In the statement of respondent under Section 313 Cr.P.C. in question No.7 it has been put to him that it has come in the evidence of PW-2 Bhumi Singh that this accident had taken place on account of rash and negligent driving on the part of respondent(accused). The answer to this question has been kept blank. This was the most material question regarding the rash or

negligent driving on the part of the respondent but this question has been left blank. The benefit of this lapse will go to the respondent. The trial Magistrate has taken a possible view from the material on record. The appellate Court will not interfere simply for the reason that other view is also possible. No case has been made out for interference. Hence, appeal is dismissed.

(Kuldip Singh)
Judge.

November 30, 2007
(sks)